

Laborers' International Union of North America, AFL-CIO, Local No. 294 (Benco Contracting & Engineering, Inc.) and Mike Jensen

Laborers' International Union of North America, AFL-CIO, Local No. 294 (RS Co., Inc. d/b/a Rising Sun Construction) and Robert L. Moss.
Cases 32-CB-4126 and 32-CB-4228

October 28, 1996

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING
AND FOX

On July 6, 1995, the National Labor Relations Board issued an order adopting, in the absence of exceptions, an administrative law judge's decision directing the Respondent, *inter alia*, to make whole hiring hall registrants for any loss of earnings suffered by reason of the Respondent's unlawful referral of three individuals to construction jobs in the Respondent's jurisdiction. On November 9, 1995, the United States Court of Appeals for the Ninth Circuit entered a judgment enforcing the Board's Order.

A controversy having arisen over the backpay due and individuals who should be the recipients of backpay under the Board's Order, the Regional Director for Region 32 issued a compliance specification and notice of hearing, identifying certain individuals as the registrants who should have been referred, alleging the amounts of backpay due them, and notifying the Respondent that it must file a timely answer complying with the Board's Rules and Regulations. The Respondent subsequently filed an answer and an amended answer to the compliance specification. The Regional Director issued an amended compliance specification and notice of hearing. The Respondent then filed an amended answer to the amended compliance specification.

On June 18, 1996, the General Counsel filed with the Board a Motion for Partial Summary Judgment and Memorandum in Support, with exhibits attached. On June 20, 1996, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the General Counsel's motion should not be granted. On July 10, 1996, the Respondent filed an Opposition to Motion for Partial Summary Judgment. Subsequently, counsel for the Respondent filed an affidavit in support of the Respondent's opposition.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

On the entire record, the Board makes the following

Ruling on Motion for Partial Summary Judgment

Section 102.56(b) and (c) of the Board's Rules and Regulations states:

(b) *Contents of answer to specification.*—The answer shall specifically admit, deny, or explain each and every allegation of the specification, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. Denials shall fairly meet the substance of the allegations of the specification at issue. When a respondent intends to deny only a part of an allegation, the respondent shall specify so much of it as is true and shall deny only the remainder. As to all matters within the knowledge of the respondent, including but not limited to the various factors entering into the computation of gross backpay, a general denial shall not suffice. As to such matters, if the respondent disputes either the accuracy of the figures in the specification or the premises on which they are based, the answer shall specifically state the basis for such disagreement, setting forth in detail the respondent's position as to the applicable premises and furnishing the appropriate supporting figures.

(c) *Effect of failure to answer or to plead specifically and in detail to backpay allegations of specification.*—If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate. If the respondent files an answer to the specification but fails to deny any allegation of the specification in the manner required by paragraph (b) of this section, and the failure to so deny is not adequately explained, such allegation shall be deemed to be admitted to be true, and may be so found by the Board without the taking of evidence supporting such allegation, and the respondent shall be precluded from introducing any evidence controverting the allegation.

The General Counsel seeks partial summary judgment on the allegations in the first eight paragraphs of the amended compliance specification. These paragraphs detail the amounts of gross backpay liability owed by the Respondent, based on wages and benefits received by the individuals whom the Respondent unlawfully referred to jobs. The Respondent's amended answer generally denies each and every allegation in the amended compliance specification. With respect to paragraphs 1-8 of the specification, the Respondent does not specifically state the basis for disagreement, or provide any alternative backpay computations with supporting figures. Furthermore, the Respondent's memorandum in opposition to the Motion for Partial Summary Judgment, as well as counsel's supporting

affidavit, fails to raise any issue with respect to the allegations in paragraphs 1-8 of the amended compliance specification. The Respondent seeks to litigate only issues concerning whether the persons nominated in subsequent paragraphs of the specification would have been dispatched to jobs but for the unlawful referrals, and whether these persons mitigated their damages through an interim job search and the receipt of interim earnings during the backpay period.

Based on the foregoing, we find that the Respondent's amended answer to paragraphs 1-8 of the amended compliance specification fails to comply with Section 102.56(b) of the Board's Rules and Regulations. We therefore deem the allegations in these paragraphs to be true, and we grant the General Counsel's Motion for Partial Summary Judgment as to them.

ORDER

IT IS ORDERED that the General Counsel's Motion for Partial Summary Judgment as to paragraphs 1-8 of the amended compliance specification is granted.

IT IS FURTHER ORDERED that this proceeding is remanded to the Regional Director for Region 32 for the purpose of issuing a notice of hearing and scheduling the hearing before an administrative law judge, which shall be limited to taking evidence concerning paragraphs of the amended compliance specification as to which summary judgment has not been granted.

IT IS FURTHER ORDERED that the administrative law judge shall prepare and serve on the parties a supplemental decision containing findings of fact, conclusions of law, and recommendations based on all the record evidence. Following service of the administrative law judge's decision on the parties, the provisions of Section 102.46 of the Board's Rules shall be applicable.